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Dawaiian Gazette. WEDNESDAY, DECEMBER 6, 1882.

EDWARD G. WALLER VS. GILBERT WALLER

Before the Chancellor. By the Court,

month of January, 1860, the Plaintiff rinerahin with Gilbert Waller, reing beef and mutton under the style of "Gilbert Waller "and which has continued to the present time; the Bill also alloges that Plain- Hilo some 10 months since. I was sitting in a tiff devoted his whole time faithfully and pany with a friend, reading the new devoted his whole time to the excep-quetriously to the business, with the excep-on the sun's surface, which appear tion of two stated periods, when absent; that tion of two stated periods, when absent; that he has drawn from the buniness only the bare living a property of himself and family, and the several knoded thousand miles. It am living expenses of himself and family, and the sum of about \$3,500 for the purchase of land cluded plaintiff from any share or participation

disposing of the partnership property; that the partnership be dissolved and a Receiver be appointed, etc. The answer denies that the alleged partnership ever existed and avere that since January 1869 to May 1882 the plaintiff was employed that he has been paid all sums of money earned by him in this capacity, and that the plaintiff has a complete remedy at law to recover moneys he may claim to be due.

I find that the parties are brothers, the respondent being the older. The plaintiff has acted under This power of attorney during the absence of pondent and has been accustomed to sign as b'Attorney in fact." when drawing the funds of the business.

The plaintiff has been allowed to the state of the business.

ally and that he allowed him to draw whatever he wished to for his support, unchecked, as a kind and indulgent brother, until his habits compelled him, for his own protection, to take the step of severing their business relations. There is no positive proof of a co-partnership. Gilbert Waller never held his brother out to the world as his partner and there is nothing in the way the business was managed to suggest a partnership. The use of the pronouns "us" and "we" by Gilbert in his correspondence with his brother and his speaking of the business as "ours," to my mind only indicates a familiar and complimentary habit of speaking, which is not sufficient proof of a partnership. In fact, the rather authoritative and minute instructions sent by him in reference to the disposition of cartain leaseholds and other property especially in the letter of April 9th, 1880 are incomission to my mind, with the latitude which one partner has a right to exercise over partnership property. ally and that he allowed him to draw whatever

a right to exercise over partnership property.
There are certain declarations sworn to b
respondent and wife as having been made b espondent and wife as having been made by daintiff that he was not a partner of his rother Gilbert Waller. These are not re-membered by plaintiff or his wife, although present when the alleged conversation tool There is testimony which is not disputed, of the plaintiff putting into the respondent's hands a sum of money, some \$350, and which he has not accounted for, but there is no proof that this was put into the business as capital

with the understanding that it was the plain tiff's contribution towards the co-partnership The statement is made that Gilbert Wallo sain that when the business increased to the slaughtering of two bullocks a day it would give one hide to the plaintiff and one hide to himself. I think this is explained on the idea that Gilbert then intended to give his brother an equal share in the business but which he never carried out.

BUILDING MATERIALS!

Upon a careful review of all the testimony
I have arrived at the conclusion that no
partnership is preven and therefore dismiss
the Bill.

B. Dole for plaintiff. E. Preston for re-Honolulu, Aug. 15th, 1882.

Supreme Court of the Hawaiian Islands. In Banco. Oct. Term, 1882. Judd, C. J., McCully, and Austin, J. J. EDWARD G. WALLER VS. GILBERT WALLER.

By the Court. After thoroughly examining the avidence taken before the Chancellor in the above case and listening to the argument of Counsel we think his decision should be affirmed for the reason stated in his opinion.

S. B. Dole for plaintiff. E. Preston for Honolulu, Nov. 27th, 1882.

Supreme Court of the Hawaiian Islands In Banco KAMOKU ET AL VS. KALAAUAHA. will, C.J., McCully and Austin J.J .- Opini

of the Court by Austin J. This is an action of ejectment. It comes ere on motion for new trial by the defendant on the ground that the verdict was against the law and the evidence and upon exceptions to rulings made by Justice Austin on the trial at

The plaintiff claimed as daughter and sole heir of Uanalakehau the patentee of the land To prove this there was the evidence of the plaintiff and also of several other witnesses

plaintiff and also of several other witnessess in the nature of podigree form which we think the jury were justified in finding as they did, they the patentee and Keakeakelani were husband and wife under the ancient custom, and prior to the law establishing Christian marriage, and that while so husband and wife they had a daughte, the plaintiff. This finds her their legitimate child: The work wife is used in the bill of exceptions, and has but one meaning.

When applied to relations existing before the law above referred to, it means that the parties to whom it refers consorted and lived together as husband and wife do since that law, and that they are to be considered in law

as such.

By request the Court charged the jury that a showing that the plaintiff was a daughter of the patentee was not enough unless the plaintiff sies showed that her parents lived together as husband and wife. And the defendant now claims that there was no proof of that fact.

We think as we have said that the evidence was ample to show that the parents were husband and wife, and that while such the plaintiff, their child, was horn. If this be so it

sand and who, and that while such the plann-liff, their child, was born. If this be so it constitutes proof that they lived together as husband and wife. They certainly did at the time the plaintiff was born.

Upon this point the plaintiff awears in sub-stance that she lived with the patentee and stance that sue fived with the leatentoe and her mother as their daughfer on the land in dispute till she was ten years old, when her mother died, and thereafter with her father till his death in 1866. This strongly tends to show a living togother as luminand and wife. The jury were right in finding it.

The evidence in the nature of pedigree was proper.

proper.

See Adams on ejectment vide. p. 283. Another point is made. The defendant excepts, that even though the plaintiff showed harself to be the legitimate daughter of the patentee, she did not show that he died intes-

entee, she did not show that he died intesate.

Upon this point we cite Brand vs. Livermora
10 Johnson's Reports p. 638. In that case it
appeared that two of the plaintiffs lessors in
ejectment had said that the ancester under
whom they claimed as heirs had made a will
which they did not produce, and no proof of
which was made at the trial.

The Court say, "Though Henry Cuyiar,
"the ancestor, may have made a will it does
"not follow that such will contained a devise
"of any part of his real estate, and partien"larlarly of the premises in question, The
"defendant was bound to show such a devise
"theirs. The Courts will percer allow the heir
"to be disinherited by men conjecture." See
also 2nd Greenleaf's ev. see, 350 ps. 507-8 see
351 p 367-Adams on ejectment vide pages 563
sed 318, The plaintiff was required only to
make positive and not negative preef, and shi
made ecough.

The defendant further claims that, as the
patentee left a widow to whom he was law
fully united in Christian wedlock, and undewhom the defendant claimed, therafore the
plaintiff, born before Ghriatian charriage was
right.

General Merchandise.

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cal, and its nucleus more dense. It will be visitor every thirteen months approximatel This is a Bill in Equity alleging that in until it assumes its place as a new planet in on month of January, 1869, the Plaintiff soier system, with a diameter probably not a

settle with him. The Bill prays for an

junction restraining the respondent from

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